

**STATE LANDS COMMISSION  
REGULATIONS GOVERNING THE FEE SCHEDULE FOR  
THE EXOTIC SPECIES CONTROL FUND**

**INITIAL STATEMENT OF REASONS**

The following is the initial statement of reasons for each of the regulations. Prior to the explanation for each provision, the text of the regulation is set forth indented and underlined.

**NECESSITY FOR THE REGULATION**

The proposed regulations are necessary because the provisions of §71215 of the Public Resources Code ("P.R.C.") require it. The introductions of nonindigenous species from ships' ballast water and sediment discharges are common occurrences that require immediate curtailment action. The Governor and the Legislature have recognized the urgent nature of this invasive problem, and on October 8, 1999, the Governor signed AB 703, establishing a new division in the P.R.C. comprised of Sections 71200 through 71217 and entitled, "Division 36. Ballast Water Management for Control of Nonindigenous Species" ("the Act"). Among the provisions of the Act is P.R.C. Section 71215(b)(1), which requires the State Lands Commission ("the Commission") to establish a reasonable and appropriate fee ("the Fee") to carry out the Act. Since the sole effect of the proposed regulations is to establish that Fee, and since the only means for establishing the Fee is through the adoption of regulations, the regulations are necessary to comply with the Act.

**PURPOSE FOR THE REGULATION**

The sole purpose and effect of the regulation is to set the amount of the Fee required under P.R.C. Section 71215.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

None

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD  
LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.**

The Commission Staff has determined that there are no alternatives considered which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.

## SMALL BUSINESS IMPACTS

The Commission finds that the adoption of these regulations will not have a significant adverse economic impact on small businesses.

All affected businesses are commercial maritime transportation vessel owners and operators, as specified under Gov. C. Section 11342, sub. (h)(2)(H), having annual gross receipts of more than \$1,500,000, as specified under Gov. C. Section 11342, sub. (h)(2)(I)(vii).

### **Article 4.5. Ballast Water Management for Control of Nonindigenous Species.**

#### **Section 2270. Ballast Water Management and Control; Definitions**

For purposes of this Article, the following definitions apply.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS.

The public problem addressed by this provision is to allay confusion and misunderstanding which may otherwise arise. This section simply sets forth definitions of pertinent terms contained in the second provision, Section 2271. Without these definitions, Section 2271 would have to be written in a cumbersome fashion that would likely not be clear to the public.

#### SPECIFIC PURPOSE OF THE REGULATION

The purpose of this provision is to set forth definitions separately so that Section 2271 can be written more clearly.

#### NECESSITY

Without these definitions, compliance with and enforcement of these regulations are likely to be fraught with confusion and misunderstanding.

#### ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.

The Commission staff has determined that there are no alternatives considered which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.

(a) “Voyage” means any transit by a vessel destined for any California port from a port or place outside the EEZ, including intermediate stops at a port or place within the EEZ. For the purposes of this section, a transit by a

vessel from a United States port to any other United States port, if at any time the vessel operates outside the EEZ or equivalent zone of Canada, is also a voyage.

This definition of the term "Voyage" is included here so that there is no ambiguity or confusion when deciding which persons are subject to the fee prescribed in Section 2271. The definition is exactly the same as that in P.R.C. Section 71200(j).

(b) "EEZ" means exclusive economic zone, which extends from the baseline of the territorial sea of the United States seaward 200 miles.

This definition is included in the regulation because the acronym "EEZ" is used in the definition of the term "voyage" in sub. (a) of this section. Inclusion of this definition here clarifies the definition of "voyage" and avoids any unnecessary ambiguity in deciding which persons are subject to payment of the prescribed fee.

As with the definition of "voyage," this definition is taken directly from the Act. In this case, the source is P.R.C. Section 71200(c).

Section 2271. Fee Schedule for Exotic Species Control Fund.

(a) The fee required under Public Resources Code Section 71215 is four hundred dollars (\$400) per vessel voyage.

This provision sets the fee payable to fund the Exotic Species Control Fund at four hundred dollars (\$400) per vessel voyage. This is less than the maximum amount authorized by P.R.C. Section 71215(b)(1).

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS.

The public problem addressed by the establishment of the Fee is that, without it, there would be no funding for programs mandated by the Act to address the transport of nonindigenous species into California waterways.

Ballast water releases are considered among the primary mechanisms by which nonindigenous species are introduced into State waters. Ballast water must be carried on board vessels in order to provide stability and avoid stressing the hull. If cargo is loaded, the vessel operator will frequently need to discharge some ballast. In doing so, the operator may also release species which have been picked up with the ballast elsewhere, but which are not indigenous to the port where the discharge takes place. Historically, nonindigenous species have caused serious economical, ecological and public health and safety problems throughout the United States. Removal costs for the zebra mussel, introduced into the Great Lakes in the 1980's, is estimated to be approximately \$3.1 billion annually. The Chinese mitten crab has disrupted water management in California and weakened levees in the Sacramento-San Joaquin River

Delta. The Asian clam, introduced into the estuary in 1986, is reducing the presence of small plankton in San Francisco Bay, reducing or altering the food available to organisms higher in the food chain. Ballast water discharges also pose significant threats to public health and safety through the spread of toxic planktonic algae and cholera.

## SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of the regulation is to establish a key element, the amount of the Fee, needed to implement funding for the programs to curtail the release of ballast water containing nonindigenous species. Both programs and the funding mechanism are already mandated by the Act. Only the specific amount of the Fee is not.

## NECESSITY

This provision is necessary because, without it, the ballast water management and control programs mandated by the Legislature could not be funded.

## ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.

There are no alternatives to the proposed regulatory action that would lessen any adverse impact on affected private persons while at the same time meeting the purposes of the Fee mandated by the Act.

To help prevent further introductions of nonindigenous species through ballast water releases, the Act establishes a mandatory, multi-agency ballast water management and control program. Responsible agencies include the California State Lands Commission, Department of Fish and Game ("DFG"), State Water Resources Control Board ("SWRCB"), and the Board of Equalization ("BOE"). Each agency is required to work in cooperation with the others in developing reports and conducting research into the extent of current invasions and potential long-term solutions to the problem of nonindigenous species introductions.

The programs required under the Act are numerous. Perhaps central is the requirement that ships traveling into the State exchange their ballast water prior to entering State waters and the Commission is charged with implementing an extensive monitoring program to ensure these exchanges are performed. Besides checking required forms to be completed by all vessel operators, the Commission is to take and inspect samples of ballast water and sediment from randomly selected vessels and to pursue other actions to assess the compliance with prescribed requirements. An enforcement program must also be established, which is to include imposition of administrative penalties. This inspection program began on January 1, 2000. The Commission is also required to synthesize and analyze monitoring and inspection information to evaluate the effectiveness of the ballast

water management program. The results of the evaluation are due to be reported to the Legislature by September 1, 2002.

DFG, with the Commission's assistance, is to conduct research to determine the location and extent of nonindigenous aquatic species populations already present in coastal and estuarine waters of the State. This includes developing and managing a research project to determine the extent of current invasions of nonindigenous species. Data collected from this research must be of the type and in a format useful for subsequent studies and reports such as: (a) the determination of alternative discharge zones; (b) the delineation of environmentally sensitive areas to be avoided for uptake or discharge of ballast; (c) the long-term effectiveness of discharge control measures; and (d) the assessment of potential risk zones where uptake must be prohibited. This study of baseline conditions is due to the Legislature by December 31, 2002. Project results are due to be reported to the Legislature by that same date so that the Legislature may consider what course of action to take before the "sunset" date of the Act on January 1, 2004. DFG is also to assist the Commission and SWRCB in its studies under the Act.

SWRCB, with the assistance of DFG, is required to conduct a study to evaluate alternatives for treating and otherwise managing ballast water to prevent the introduction and spread of nonindigenous species into the waters of the State. This study will determine (a) the best available technologies that will provide the greatest reduction in the number of introduced species; (b) the relative effectiveness of those technologies; and (c) the cost of implementing those technologies. The study shall provide recommendations of the best available technologies, and is due to the Legislature by December 31, 2002. SWRCB is also to: (a) Work with the Commission to analyze the monitoring and inspection information that will be collected from vessels making port calls in California to evaluate the effectiveness of the Ballast Water Management Program; (b) Assist the Commission in drafting a report to include a summary of data collected by the Commission as part of the ballast water monitoring program, and use that data to evaluate the effectiveness of the overall program; and (c) Work with DFG in its research baseline conditions existing in coastal and estuary waters, including an inventory of the location and extent of nonindigenous species already present in the State's coastal and estuarine waters.

Finally, BOE is required by the Act to collect the required fees for the Fund, and the cost of collection must also be covered by the Fund.

The annual budget for all of these elements varies over the life of the program, which ends December 31, 2003. Expenditures will be highest in Fiscal Years 2000/2001 and 2001/2002. The reason is that most of the studies required by the Act will be conducted during those two years. In fact, in each of those two years, a fee of \$400 will be insufficient to cover budgeted costs. The only reason those costs will be covered is that fees collected in the first half of the year 2000 will be sufficient to provide some funding for the following two fiscal years. This can be accomplished only if the Fee is set at \$400 or more.

The amount of the fee under the Act may be modified in the future. If the Commission finds that collection rates are higher or lower than anticipated, the Commission will have to consider again the appropriate amount of the fee. If that action is necessary, the modification will be made as an amendment to these regulations.

- (b) (1) The Executive Officer of the California State Lands Commission shall invite representatives of persons and entities who must pay the fee required under Public Resource Code Section 71215 to participate in a technical advisory group to make recommendations regarding the amount of the fee, taking into account the provisions of Public Resources Code Sections 71200 through 71216.
- (2) The technical advisory group shall meet on a regular basis after July 1, 2000, as determined by the group.

#### PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS

The public problem addressed by this provision is the need for information from those subject to the regulations. Without adequate information, the Commission may not be able to determine if it is acting appropriately in setting the Fee. Furthermore, those subject to the regulations would like assurances that the Commission will in fact receive information.

#### SPECIFIC PURPOSE OF THE REGULATION

The specific purpose of the proposed provision is to establish a technical advisory group to make recommendations with regard to the Fee. The technical advisory group would be comprised of representatives from those who pay the Fee. The budgetary needs for the program are established. The only question with regard to the Fee is how the costs of the program should be divided up among those who are paying it.

#### NECESSITY

The proposed provision is necessary in order to assure those subject to the regulations that they will have an opportunity to make recommendations with regard to the Fee.

#### ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS

The Commission has determined that there are no alternatives considered which would be more effective in carrying out the purposes of the proposed provision or would be as effective and less burdensome to affected private persons.